

¹ Respondent's evaluation of the claimant with Paul Stein, M.D., was set to occur on October 4, 2012 (before the date of Judge Klein's Order), but it was apparent that claimant was not going to attend the evaluation. Motion Hearing Trans. (Sept. 25, 2012), Resp. Exs. B & C.

Respondent requests review of Judge Klein's Order dated September 27, 2012. Respondent asserts Judge Klein exceeded his jurisdiction and authority in granting claimant's request for suspension of terminal dates. Respondent argues that Judge Klein may only suspend terminal dates based on statutory authority. Claimant asserts that the Board lacks jurisdiction to hear an interlocutory appeal, but if it has jurisdiction, Judge Klein's order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record compiled to date and considering the parties' arguments, the Board finds:

A regular hearing was held March 13, 2012. Judge Klein set the claimant's terminal date for May 14 and respondent's terminal date for June 13, 2012. Judge Klein later approved an agreed order extending claimant's terminal date to June 18 and respondent's terminal date to July 18, 2012.

On June 29, 2012, the Division of Workers Compensation received claimant's "Motion to Suspend Terminal Dates." The motion stated that claimant's counsel had lost contact with the claimant and claimant would be prejudiced unless claimant's counsel was able to contact him and obtain additional information. The Division also received a July 23, 2012, letter from claimant's attorney to respondent's counsel, along with a proposed motion, suggesting terminal dates for both parties would be October 25, 2012. The parties were not able to come to an agreement regarding terminal dates. As a result, a motion hearing regarding suspension of terminal dates was set to occur on September 25, 2012.

Based on statements of counsel at the motion hearing, claimant absconded after apparently violating probation. Claimant's counsel lost contact with his client. Claimant's counsel wanted terminal dates suspended so his client would have "an opportunity to complete his workers compensation claim."² Respondent objected to claimant's request.

Judge Klein's Order concerns terminal dates. Judge Klein's Order is interlocutory. Interlocutory orders are generally not subject to interlocutory appeal.³

Judge Klein's Order is not a preliminary hearing order under K.S.A. 44-534a. The judge's Order does not award claimant medical treatment, temporary disability compensation or any other form of preliminary benefits. Judge Klein made no findings concerning compensability.

² Motion Hearing Trans. (Sep. 25, 2012) at 5.

³ See *Damron v. State*, Nos. 1,028,933, 1,033,846, 1,053,691 & 1,039,526, 2012 WL 4763646 (Kan. WCAB Sep. 5, 2012).

K.S.A. 44-523 allows terminal dates to be extended on application for good cause shown. While respondent's argument that claimant being on the "run from law enforcement officials"⁴ would not justify an extension of his terminal date is certainly understandable, Judge Klein has jurisdiction to hear and decide the issue, rightly or wrongly.⁵

Judge Klein's Order is not a final order or award. K.S.A. 2011 Supp. 44-551(i)(1) limits the Board's jurisdiction to review "final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge" The interlocutory order here is not presently reviewable by the Board.

When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action. The Board is without jurisdiction to review Judge Klein's Order dated September 27, 2012, until the time of final award.

CONCLUSION

WHEREFORE, it is the finding, decision and order of the Board that respondent's appeal from the Order of Administrative Law Judge Thomas Klein dated September 27, 2012, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of November, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

⁴ Respondent's Brief at 4 (filed Oct. 19, 2012).

⁵ See *Allen v. Craig*, 1 Kan. App. 2d 301, 303-04, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

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Thomas Klein, Administrative Law Judge